

Letter of Findings Number: 04-20120715
Sales Tax
For Tax Years 2009-2010

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ISSUE

I. Sales Tax—Calculation of sales tax.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-4-1; [45 IAC 2.2-2-1](#); [45 IAC 2.2-2-2](#).

Taxpayer protests the Department's calculation of sales tax due.

STATEMENT OF FACTS

Taxpayer is an Indiana business and retail merchant. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected and remitted the proper amount of sales tax for the years 2009 and 2010. The Department therefore issued proposed assessments for sales tax, penalty, and interest. Taxpayer protests the Department's calculation of sales tax due. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as necessary.

I. Sales Tax—Calculation of sales tax.

DISCUSSION

Taxpayer protests a portion of the Department's proposed assessments of sales tax for the tax years 2009 and 2010. Taxpayer agrees that some sales tax was not collected and remitted; however, Taxpayer protests the Department's calculation of sales tax due for those years because Taxpayer claims to have an operating margin smaller than that applied during the audit. Taxpayer, however, has provided no documentation to support the claim.

The Department first refers to [45 IAC 2.2-2-1](#) which states:

An excise tax, known as the state gross retail tax is imposed on retail transactions made in Indiana.

The Department then refers to [45 IAC 2.2-2-2](#), which states:

The retail merchant, acting as an agent for the state of Indiana, must collect the tax. The tax is borne by the customer. Consideration is a necessary element of taxable transaction

The Department next refers to IC § 6-2.5-4-1, which states in relevant part:

(a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

...

The Department also refers to IC § 6-8.1-5-1, which states in its relevant parts:

...

(b) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.

(c) If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

...

Taxpayer was unable to produce documents to support its claim that it had a smaller operating margin than the one applied during the audit, so the Department made its assessment based on the best information available, as provided by IC § 6-8.1-5-1(b).

In conclusion, Taxpayer did not keep adequate records available for the Department to review and determine the appropriate sales tax. The burden is on Taxpayer to prove the proposed assessment was wrong, as provided by IC § 6-8.1-5-1(c). Taxpayer is a retail merchant making retail sales as defined by IC § 6-2.5-4-1. Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

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